



Docket No.: SON-2981
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Nobukata Okano et al.

Application No.: 10/809,432

Confirmation No.: 8124

Filed: March 26, 2004

Art Unit: 2613

For: COMMUNICATIONS SYSTEM AND
COMMUNICATIONS LIGHTING
APPARATUS

Examiner: D. S. Kim

PETITION UNDER 37 C.F.R. § 1.181
TO REQUEST WITHDRAWAL OF FINAL OFFICE ACTION

MS AF
Commissioner for Patents
P.O. Box 1450
Alexandrja, VA 22313-1450

Dear Sir:

Applicant hereby petitions for withdrawal of finality of the Office Action of June 1, 2007.

Applicant, seeking review of the prematureness of the final rejection within the Final Office Action, respectfully requests reconsideration of the finality of the Office Action for the reasons set forth hereinbelow. See M.P.E.P. §706.07(c).

This is a petitionable issue because Applicant seeks review of the prematureness of the final rejection within that Office Action.

The “second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement” (emphasis added). M.P.E.P. §706.07(a).

Argument

Paragraph 6 of the non-final Office Action mailed on December 14, 2006 includes a rejection of claims 3-4 under 35 U.S.C. §103 as allegedly being unpatentable over International Publication No. WO 02/25842 to Dowling et al. (Dowling).

Within the Amendment in Response to Non-Final Office Action filed on March 2, 2007, claims 3 and 4 have been rewritten only to place that claim into independent form. Page 9 of the Amendment includes advisories highlighting that claims 3 and 4 have been rewritten to place those claims into independent form.

Thus, claims 3 and 4 found within the Amendment of March 2, 2007 were present prior to the mailing on December 14, 2006 of the non-final Office Action.

In response to the Amendment filed on March 2, 2007, pages 2-3 of the Final Office Action of June 1, 2007 admit that Dowling does not expressly disclose a device *wherein the second light source unit has at least two light sources which intermittently emit light beams of the same wavelength, which are independent of each other*, as recited within claim 3.

Furthermore, pages 2-3 of the Final Office Action of June 1, 2007 admit that Dowling does not expressly disclose a device *wherein the second light source unit has at least two light sources which intermittently emit light beams of different wavelengths, which are independent of each other*, as recited within claim 4.

Nevertheless, paragraphs 3 and 4 of the Final Office Action of June 1, 2007 include a new ground of rejection of claims 3 and 4 under 35 U.S.C. §103 as allegedly being unpatentable over Dowling and in view of a new reference, U.S. Patent No. 6,868,236 to Wiltsey et al. (Wiltsey), and yet another new reference, U.S. Patent No. 6,522,437 to Presley et al. (Presley).

Paragraph 13 of the Final Office Action admits that the rejections of claims 3 and 4 found within paragraphs 3 and 4 of the Final Office Action are new grounds of rejection.

Thus, the new rejection of claims 3 and 4 made within the Final Office Action are new grounds of rejection that are neither necessitated by applicant's amendment of claims 3 and 4 nor based on information submitted in an information disclosure statement.

Accordingly, the finality of the rejection of claims 3-4 made within the Final Office Action is premature at least for this reason.

"If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection." M.P.E.P. §706.07(d).

Accordingly, Applicant hereby petitions the Commissioner under 37 C.F.R. §1.181 to direct the examiner to withdraw the finality of the Office Action mailed in the above-identified application on June 1, 2007.

Fees

No fee is believed required to support this petition. See 37 C.F.R. §1.181.

However, if any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

For any comments or suggestions that could place this application in even better form, please telephone Brian K. Dutton, Reg. No. 47,255, at 202-955-8753.

Dated: June 18, 2007

Respectfully submitted,

By

Ronald P. Kananen

Registration No.: 24,104

RADER, FISHMAN & GRAUER PLLC

Correspondence Customer Number: 23353

Attorney for Applicant